IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

JUDGMENT

1. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.30/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.434/JU/2000 for Asstt.
Year 1993-94.

2. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.21/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.433/JU/2000 for Asstt.
Year 1993-94.

3. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.22/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.504/JU/2000 for Asstt.
Year 1994-95.

4. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.23/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.432/JU/2000 for Asstt.
Year 1995-96.

5. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.24/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.431/JU/2000 for Asstt.
Year 1995-96.

6. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.25/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.500/JU/2000 for Asstt.
Year 1993-94.

7. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.26/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.501/JU/2000 for Asstt.
Year 1995-96.

8. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.27/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.503/JU/2000 for Asstt.
Year 1994-95.

9. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.28/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.502/JU/2000 for Asstt.
Year 1995-96.

10. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.29/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.499/JU/2000 for Asstt.
Year 1993-94.

11. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.14/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.430/JU/2000 for Asstt.
Year 1994-95.

12. C.I.T. Bikaner **VS**. Hissaria Bros. Hanumangarh.
D.B. INCOME TAX APPEAL NO.15/2002
against the order dt.17.8.2001 passed by ITAT,
Jodhpur Bench in ITA No.429/JU/2000 for Asstt.
Year 1994-95.

Date of judgment : 21st July, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. K.K. Bissa for the appellant.

Mr. Rajendra Mehta for the respondent.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Heard learned counsel for the parties.

These appeals arise from common order passed by the Tribunal by which 12 appeals, 6 by assessee and 6 by Revenue, were decided by common order and the 12 appeals detailed above have arisen out of that common order relating to the different assessment years 1993-94, 1994-95 and 1995-96.

While admitting the appeals, the following questions have been framed as substantial questions of law inviting consideration in these appeals:-

> 1. Whether on the fact and in the circumstances of the case the ITAT was right in holding that the penalty proceedings and the order passed bny JCIT under Section 271-D are vitiated being time barred by virtue of provisions of Sec.275(1)(c) of the Act held to be applicable whereas the case of the assessee is covered under Section 275(1)(a) of the Act since the penalty proceedings pertained to assessment order under appeal and Sec.275(1)(c) was not applicable to it?

2. Whether on the facts and in the circumstnces of the case the notice issued for initiating penalty proceedings and the penalty order passed pursuant thereto by JCIT in accordance with provsions of Sec.271-D (a) of the Act was bad and unlawful though passed within limitation?

3. Whether on the facts and in the circumstnaces of the Assessing Officer was empowered to initiate proceedings and pass penalty order under Sec.271-D of the Act for the reason of issuing show cause to the assessee for referring the matter to the Joint Commissioner who else was empowered to impose penalty under Section 271-D(2) of the Act?

4. Whether on the facts and in the circumstances of the case the ITAT was justified in holding that the assessee acted under bonafide belief and did have reasonable and sufficient cause as provided under Section 271-D of the Act on account of precedence and trade practice allegedly amounting to Res-judicata?

The facts as found by the Tribunal about the assessee in brief are that the assessee is a firm doing the business of Kachcha Adhatia acting as agent for its farmer

constituents, who used to bring their crops to the assessee for sale and the assessee in this relationship used to sell their crops and keep/retain the sale proceeds of crops so as to be adjusted against their withdrawal from time to time and buying the goods. The assessee was catering to their needs like payment in cash, supply of goods like fertilizers, seeds, pesticides etc. retaining sale proceeds of crops, accepting amount given by the farmers for the purpose of meeting of their time to time needs. The nature of dealing between Kacha Adtiya and the farmer were fast, frequent and of current nature. No stipulation ever existed in regard to amounts, if any, given by the farmer to the assessee for keeping it for the purpose of meeting out time to time needs. The farmer-constituents were hesitant in having dealings through banks, due to time constraints, tedious formalities etc. etc. The dealing between the assessee and the farmer-constituents were in cash, sometime they took sums in cash from the assessee-firm and sometime they gave the sums to assessee-firm, so that their respective requirements might be met.

The Assessing Officer found use of the money received by the assessee through sale of crops of his farmers constituents to be in the nature of deposits and invoked the provisions of Section 269 SS as applicable to the amount

received by a person as deposit from the depositors and the amount utilised by the farmers as withdrawal from the deposits by way of repayment inviting operation of Section 269 T. Finding that such transactions of deposit and repayment was not through bank, penalty proceedings under Section 271 D and 271 E respectively concerning the deemed deposits and deemed repayment of loan were initiated during the assessment proceedings for the three assessment years stated herein above and as a result of initiating penalty proceedings under Section 271 D and 271 E the assessing officer imposed penalties in each case.

The CIT (Appeals) cancelled the penalties holding the instance to be known as 'balancing of accounts'. Such transaction neither fall in the category of deposits under Section 269 SS and its repayment under Section 269 T nor the penalty was otherwise justified because the CIT (Appeals) also found that the assessee has shown reasonable cause for non-adherence to requirement of dealing through banks as per Sections 269 SS and 269 T. However, the CIT (Appeals) held some instances to be of cash credits as per Annex.A totaling to Rs.1,89,000/-. Transactions pertaining to three persons, namely, Shri Prem Prakash, Shri Gangaram and Shri Shivraj were held to be in the nature of deposit and violative of

Sec.269 SS and in turn the repayment and withdrawals to be in violation to Section 269 T and sustained penalty in respect thereof.

In respect of those transactions, the CIT (Appeals) found that for non-compliance of Sections 269 SS and 269 T there did not exist reasonable cause with the assessee.

The assessee's contention that the orders of penalty passed in each case for assessment year 1993-94, 1994-95 and 1995-96 were barred by time in term of Section 275(1) (c) was not accepted by the Assessing Officer as well as by the CIT (Appeals).

The Tribunal found on the question of limitation that the order of penalty should have been passed within 6 months from the end of month in which the assessment was completed. On this premise, it was held that since all the penalty orders were passed beyond 6 months from the end of the month in which assessments were completed the penalty orders were barred by time. It did not agree with the contention of the Revenue that the limitation for completing the penalty proceedings was governed by Section 275(1)(a) and not by Section 275(1)(c) because the assessment proceedings

for each of the assessment year in question have been subjected to appeal. The Tribunal opined that since the penalty proceedings are independent of the assessment proceedings, the filing of the appeal against the assessment orders during the course of which penalty proceedings were initiated was irrelevant.

The following chart gives the detail of respective period of limitation within which the penalty proceedings could have been completed as per the Revenue or as per the assessee:-

A.Y.	Notice by A.O.		Notice by JCIT		Last date for levy of penalty as per revenue	Last date for levy of penalty as per assessee	Date of penalty order
	271D	271E	271d	271 E			
93-94	15.3.96 --- P2 PB	15.3.96 --- P3 PB	21.1. 2000	21.1. 2000	31.3.2000 "	30.9.96 "	29.3.2000 "
94-95	12.9.96 --- P3 PB	12.9.96 --- P4 PB	21.1. 2000 ---	21.1. 2000 ---	31.3.2000 "	30.9.96 "	29.3.2000 "
95-96	20.12.96 --- P1 P3	20.12.96 --- P4 PB	21.1. 2000 --- P 2	21.1. 2000 --- P 4	31.3.2000 "	30.6.1997 "	28.3.2000 "

Apart from finding the penalty orders barred by time under Section 275(1)(c), on merit of the case, the Tribunal found the credits in assessment year 1993-94 to be

genuine as has been contended by the A.R. of the assessees. Besides the returns of the assessment year 1993-94 and 1994-95 were filed much earlier to the date of search, based on books of accounts which were complete and closed and considering the CBDT circular which explained that where a Kachha Arhatiya sells goods belonging to agriculturists, the sale proceeds thereof which remain with him cannot be regarded as deposit made by the agriculturist with 'Kachha Arhatia'. Further, where the “Kacha Arhatiya' remits only a part of sale proceeds to the agriculturist, the unremitted part of the sale proceeds would also not assume the character of a deposit. Therefore, the repayment of such sale proceeds does not fall within the purview of section 269 T of the Act, it came to the conclusion that to the facts of the present case, the circular of the Board aptly applies. Therefore, the money received by the assessee as Kachcha Arhatiya as sale proceeds of the agricultural produce received from his constituents and retained by him cannot be considered deposits consequently its remittance in part or full to the constituents or its utilisation by such constituents also does not fall within the purview of repayment of such deposits within the meaning of Sec.269T. Coupled with this fact of finding about all transactions to be genuine and bonafide, looking to the practice prevailing and requirements of the farmers, the

Tribunal was also of the opinion that the assessee had reasonable and sufficient cause for not complying with Section 269 SS and 269 T even if the same were to be considered as deposit and repayment of deposits. About the additions sustained by the CIT (Appeals) in respect of alleged cash credit, the Tribunal found such transaction to be not outside the purview of transaction carried out by the assessee as Kachcha Adhatiya. Hence, the penalty sustained by the CIT (Appeals) was also set aside.

We shall first deal with question No.4. The question No.4 reads as under:-

> "4. Whether on the facts and in the circumstances of the case the ITAT was justified in holding that the assessee acted under bonafide belief and did have reasonable and sufficient cause as provided under Section 271-D of the Act on account of precedence and trade practice allegedly amounting to Res-judicata?"

The question No.4 relates to applicability of Section 273-B to the present case for laying penalty under Section 271-D and 271-E by treating the amounts of sale proceeds received by the assessee on behalf of farmer

constituents as their Kachha Adhtiya to be deposits and consequently its user by the farmer constituents as repayment of deposits. Section 271B inter alia provides that no penalty shall be imposable under Section 271D and 271E by the person or the assessee as the case may be for any failure referred to if there was reasonable cause for said failure.

We have noticed that the CIT (A) as well as Tribunal have found that the assessee had reasonable cause for non-compliance of sections 269 SS and 269 T on account of the trade practices, the harassment, inconvenience caused to the scattered agriculturists in rural area and also the bonafide conduct of the assessee. The contention put forward by the assessee was accepted in alternative by assuming that even if the amount so received was considered to be a deposit and its remittance as repayment of the deposits in terms of Section 269 SS and 269 T respectively.

Ordinarily, whether there exists a reasonable cause for assessee's failure to comply with the provision of 269 SS and 269 T inviting levy of penalty under Section 279 D and 279 E respectively and his absolution from penalty on account of existence of reasonable cause is a question of fact and it does not give rise to question of law. Apparently, in the

facts and circumstances of the case taken on facts of each case no straight jacket formula can be laid down for the purpose of determining a question of law what is reasonable and sufficient cause only thing is that no person of ordinary prudence can come to such a conclusion other than a finding about absence or existence of reasonableness can be considered vitiated. It is not a case here. Moreover, we are of the opinion that in view of clear instructions of the Central Board of Direct Taxes relating to the transaction of the nature in which the assessee has indulged as Kachcha Adhatiya on behalf of his constituents referred to herein and in the order of the Tribunal is not to be considered as a deposit when the money is retained by the Kachha Adhatiya for remitting to the constituents and subsequent remittance or adjustment of such amount by discharging obligation of his constituents or remittance of such amount to the constituents are not considered to be repayment of the deposits or loan. The Assessing Authorities were bound by the general instructions contained in the circular issued by the Board so far as the dealings of Kachcha Adhatiya of the nature found by the assessing officer himself in the present case. Therefore, there was hardly any occasion for invoking Sections 269 SS and 269 T and on supposed omission on the part of assessee to comply with requirement of said provisions for inviting

application of penalty provisions of Section 271 D and 271 E.

Therefore, we are in the agreement with the Tribunal that the provisions of Sections 271 D and 271 E could not have been invoked in the present case.

Even assuming that provisions of Sec.269 SS and 269 T could be invoked in the present case in the facts and circumstances, the findings of Tribunal that reasonable cause existed for the assessee which resulted in failure to comply with the provisions of section 269 SS and 270 T are finding of fact which does not give rise to any question of law. In the aforesaid view of the matter, penalty under Sections 271 D and 271 E was not imposable substantively and was rightly set aside by the Tribunal.

In view of the above finding in which in our opinion the Tribunal was right and which is not also under challenge by the Revenue that the present transactions were governed by the CBDT circular referred to above and did not invite the provisions of Section 269 SS and 269 T and consequently no penalty was imposable under Sections 271 E and 271 D. Now we propose to examine the issue involved in question No.1.

In the facts and circumstances noticed above, the Tribunal has held the penalty orders to be barred by time in terms of Section 275(1)(c).

The Revenue contends that the provisions of Section 275(1)(a) is attracted so far as limitation in the present case is concerned and if Section 271(1)(a) is applicable, the limitation for completing the penalty proceedings is extended upto 6 months from the date of expiry of month in which the order has been passed in appeal or other proceedings arising out of the assessment in the course of which penalty proceedings have been initiated and the order imposing penalties under Sections 271 D and 271 E had been passed within such extended period from date of appellate decision against assessment order for Assessment Year during which notice under Section 271 D and 271 E was issued.

It would be apposite here to refer to Section 275 in its fullness:-

> **275. Bar of limitation for imposing penalties.-** (1) No order imposing a penalty under this Chapter shall be passed--
>
> (a) in a case where the relevant assessment or

other order is the subject-matter of an appeal to Commissioner (Appeals) under section 246 or an appeal to the Appellate Tribunal under Section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later;

(b) in a case where the relevant assessment or other order is the subject-matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is passed;

(c) in any other cases, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

Explanation.-- In computing the period of limitation for the purposes of this section,--

(i) the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129;

(ii) any period during which the immunity granted under section 245H remained in force; and

(iii) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court.

(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty onor before the 31st day of March, 1989."

It would not be out of place to consider the relevant legislative history of the provision in question for the present purposes.

Under the Indian Income Tax Act, 1961 as originally enacted, no limitation was prescribed for completion of the penalty proceedings. However, considering that there should not be any inordinate delay in imposing penalty and to streamline the levy of penalty within reasonable time in the Act of 1961, Section 275 was enacted as a new provision for regularising imposition of penalty. It is pertinent to notice that if at the relevant time when the scheme for levy of penalty was enacted in 1961 Act, the case in which the penalty was

envisaged under Chapter XX1, the penalty proceedings were required to be initiated during the course of relevant assessment proceedings or its appellate proceedings by the Appellate Authority. Attention may be invited to the provisions contained in Sections 271 and 273 which were the principal provisions for imposing penalty. The simple provision which was enacted was that no order in this chapter shall be passed after the expiration of two years from the completion of proceedings, in the course of which the proceedings for imposition of penalty have been commenced. Thus, the limitation for imposing penalty under Section 275 as originally enacted was directly linked with the completion proceedings in the course of which the penalty proceedings were initiated in terms of Section 271 or Section 273 which were the principal provisions for imposing penalty under chapter XX1. Since the initiation of penalty proceedings were linked with assessment proceedings and the orders in such assessments were subject to appeal, the findings in such proceedings ordinarily became the foundation for initiating proceedings for penalty and remained relevant evidence to reach final conclusion in penalty proceedings which were otherwise independent. Where assessment proceedings in the course of which penalty proceedings were initiated became subject matter of appeal and there was modification or reversal of findings, it affected

final result of penalty proceedings also.

Section 275 was substituted by the Taxation Law (Amendment) Act, 1970 which came into effect w.e.f. 1st April, 1971. The change was explained by the Board vide circular 56 dated 19th March, 1971. Significantly, it postulated that section 275 of the Income Tax Act which specified the time -limit for completion of penalty proceedings has been substituted by a new section. Under the existing section, penalty proceedings for concealment of income or defaults in furnishing the return or accounts called for by notice or failure to pay advance tax on the taxpayer's own estimate, etc., are required to be completed within two years from the date of completion of the proceedings in the course of which the penalty proceedings were commenced. The operation of this time-limit has resulted in practical difficulties in cases where the Appellate Assistant Commissioner remands the appeal against the assessment for further enquiry by the Income Tax Officer or deletes or reduces the addition made on account of concealed income and the Department takes up the matter in further appeal before the Appellate Tribunal. Sometimes, a final decision on the quantum of the concealed income becomes available only after the expiry of the two-years time limit.

The Section 275 as substituted aims at obviating difficulties in such cases, reducing avoidable work and avoiding hardship to assessees. It provides that the time-limit for making an order imposing a penalty under the provisions of Chapter XXI of the Income-tax Act will, ordinarily, be two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed. However, in a case where the relevant assessment or other order is the subject-matter of an appeal to the Appellate Assistant Commissioner or an appeal by the Income-tax Officer to the Appellate Tribunal, the time limit for completing the penalty proceedings will be either the two-years period as stated above or a period of six months from the end of the month in which the order of the Appellate Assistant Commissioner or, as the case may be, of the Appellate Tribunal is received by the Commissioner, whichever period expires later. It may be noted that the two-years period will henceforth expire at the end of a financial year, instead of on different dates during the financial year, and the six-month period will expire at the end of a calendar month. This facilitates the exercise of vigilance by Tax Administration on the expiry of the limitation period and ensure that penalty proceedings are completed in all cases in time.

Secondly, the Direct Tax Laws (Amendment) Act, 1987 which came into effect w.e.f. 1.4.1989, the Section 275 was amended. Vide amendment, the time limit for completion of penalty proceedings which was generally two years from the end of financial year in which such proceedings were completed or six months from the end of the month in which action for imposition for penalty was initiated, whichever period expired later.

By these amendments, the three categories were made for applying limitation for completing the penalty proceedings taking into consideration the various penalty proceedings for default of certain provisions of Income Tax Act which are not necessarily linked with proceedings for any particular assessment year in the course of which only penalty proceedings were required to be initiated. Such consequences of default were not linked with the principal assessment proceedings for any specific Assessment Year but were independent of it.

By substituting Section 275(1), which became operative from 1.4.1989 the provision divided cases for the purpose of prescribing limitation for completing penalty

proceedings into three categories:

(i) Category I covers the cases where the assessment to which the proceedings for imposition of penalty relate is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under Section 246 or w.e.f. 1.6.2000 section 246A or an appeal to the Appellate Tribunal under Section 254;

(ii) Category II covers the cases where the relevant assessment is the subject matter of revision under Section 263; and

(iii) Categories III covers all other cases not falling within Category I and Category II which is governed by clause (c).

By dividing into three categories the period of limitation for cases falling under category (i) i.e. Clause 1(a) is the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed or six months from the end of the month in which the order of the Deputy Commissioner (Appeals) or the

Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner whichever period expires later.

The period of limitation for the cases falling under Category (II) is six months from the end of the month in which such order on revision is passed and; the period of limitation for the cases falling under above Category III is the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. In the last category filing of appeal in respect of order passed in proceedings during which penalty proceedings were initiated is not relevant.

To this effect, a circular No.551 dated 23rd January, 1990 and another circular No.554 dated 13th Feb., 1990 were issued by the Board of Direct Tax.

A close scrutiny of Section 275 which reproduced herein above shows that clause 1(a) covers those cases where the penalty proceedings are in respect of a default related to principal assessment for a particular assessment

year and the penalty proceedings are required to be initiated in the course of that proceedings only. In such case where the relevant assessment order or other orders are the subject-matter of appeal to the Commissioner (Appeals) under Section 246 or an appeal to the Appellate Tribunal under Section 254, after the expiry of the financial year in which the proceedings in the course of which action for the imposition of penalty has been initiated, are completed, or 6 months from the end of the month in which the order of Commissioner (Appeals) or, as the case may be, of the Appellate Tribunal is received by Chief Commissioner or Commissioner, whichever period expires later.

Apparently clause (a) governs the categories which are integrally related to the assessment proceedings and are not independent of it.

We have also noticed that this provision was brought into effect in 1970 w.e.f. 1st April, 1971 so that proceedings may not require rectification or modification depending on out come of the appeal against the orders passed in relevant assessment proceedings or the other proceedings in the course of which the penalty proceedings are required to be initiated.

We have also noticed that Sections 271 and 273 were the two original penalty provisions, which require the penalty proceedings to be initiated during the course of relevant assessment proceedings or the other relevant proceedings as the case may be. The penalty proceedings could also be initiated during the appellate proceedings arising out of the relevant assessment proceedings. It is only where the assessment proceedings are independent and not directly linked to the assessment proceedings and the result of such proceedings in the course of which the penalty proceedings were initiated does not effect the levy of penalty. On such penalty proceedings, independent of the assessment proceedings that Clause (c) has been made applicable. In this category the period of limitation for completing the penalty proceedings is linked with the initiation of the penalty proceedings itself.

In such cases, the penalty proceedings can be initiated independent of any proceedings but obviously, the penalty proceedings can be initiated only when the default is brought to the notice of the concerned authority which may be during the course of any proceedings and, therefore, for this type of cases where the penalty proceedings have been

initiated in connection with the defaults for which no statutory mendate is there about any particular proceedings during the course of which only such penalty proceedings can be initiated, a different period of limitation has been prescribed under clause (c) as a separate category. In cases falling under clause (c) penalty proceedings are to be completed within 6 months from the end of the month in which the proceedings during which the action for imposition of penalty is initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. There is no provision under clause (c) for extended period of limitation commensurating with completion of the appellate proceedings if any arising from the proceedings during the course of which such penalty proceedings are initiated as in the case where the penalty proceedings are linked with the assessment proceedings or the other relevant proceedings.

The expression other relevant thing used in section 275 (1)(a) and clause (b) of sub-section (1) of Section 275 is significantly missing from Clause (c) of Section 275 (1) to make out this distinction very clear.

We are, therefore, of the opinion that since

penalty proceedings for default in not having transaction through bank as required under Section 269 SS and 269 T is not related to the assessment proceedings but is independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under Section 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and, therefore, clause (a) of Section (1) of Section 275 cannot be attracted to such proceedings. If that were not so the clause (c) of sub-section 275(1) would be redundant because otherwise as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though final fact finding in this proceeding may not have any bearing in the issues relates to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income, if clause (a) was to be invoked, no necessity of clause (c) would arise.

Thus, both on the ground that the transaction in

question retention sale price by the Kachha Adatiya did not amount to deposit and its utilisation and dealing with at the instance of farmer constituents did not amount to repayment of loan or deposits within the meaning of Sec.269B or Section 269T and on the ground that limitation under Section 275(1)(c) applies to such proceedings we hold in favour of respondents.

Accordingly, these appeals fails and are hereby dismissed. No order as to costs.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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